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10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN FRANCISCO DIVISION

13 WAYMO LLC,

14 Plaintiff,

15 vs.

16 UBER TECHNOLOGIES, INC.;
OTTOMOTTO LLC; OTTO TRUCKING LLC,

17 Defendants.

CASE NO. 3:17-cv-00939

**PLAINTIFF WAYMO LLC'S RESPONSE
TO THE COURT'S NOTICE OF HEARING
RE INSTRUCTIONS AND OFFERS OF
PROOF (DKT. 2168)**

Hearing:

Date: November 14, 2017

Time: 8:00 am

Place: Courtroom 8, 19th Floor

Judge: The Honorable William Alsup

Trial Date: December 4, 2017

1 Plaintiff Waymo LLC (“Waymo”) submits the following response to the seven issues (each, an
2 “Issue”) raised in this Court’s Notice of Hearing re: Instructions and Offers of Proof (the “Notice”).¹

3 **I. ISSUE #1: JURY INSTRUCTIONS REGARDING STROZ AND/OR MORRISON**
4 **AGENCY**

5 The parties are continuing to meet and confer regarding this issue and Waymo will be prepared
6 to address its position at the hearing.

7 **II. ISSUE #2: OFFER OF PROOF WITH RESPECT TO ACQUISITION OF TRADE**
8 **SECRETS BY STROZ AND/OR MORRISON**

9 Waymo will not seek damages at trial from Uber and Ottomotto accruing solely from Stroz’s
10 and/or MoFo’s wrongful acquisition of Waymo’s trade secrets. The evidence at trial, however, will
11 show actual use by both Uber and Ottomotto and damages resulting from such use. Moreover,
12 separate and apart from damages and based solely on Stroz’s and/or MoFo’s wrongful acquisition of
13 Waymo’s trade secrets, Waymo is entitled to injunctive relief requiring Uber and Ottomotto (and their
14 agents’ Stroz and MoFo) to return Waymo’s trade secrets and preventing Uber and Ottomotto (and
15 Otto Trucking) from using Waymo’s trade secrets in the future.

16 **III. ISSUE #3: OFFER OF PROOF THAT DEFENDANTS “DISCLOSED” TRADE**
17 **SECRETS**

18 In Exhibit 1 to this response, Waymo sets forth its evidentiary proof that Defendants
19 disclosed Waymo’s Asserted Trade Secret Nos. 2, 7, 9, 25, 13, 14, and 90. Waymo reserves its
20 rights to offer additional and/or different evidence, through witness testimony and documentary
21 evidence, on this issue during trial.

22 **IV. ISSUE #4: JURY INSTRUCTIONS REGARDING EMPLOYEE MOBILITY**

23 The parties are continuing to meet and confer regarding this issue and Waymo will be prepared
24 to address its position at the hearing.

25 **V. ISSUE #5: OFFER OF PROOF REGARDING REASONABLE ROYALTY**
26 **EVIDENCE**

27 For the reasons set forth in Waymo’s Critique of and Proposed Additions to Tentative Jury
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¹ Unless otherwise noted, capitalized terms are as defined in Waymo’s (i) Critique of the TJIs and Form (Dkt. 2077), (ii) Counter-Critique of the TJIs and Form (Dkt. 2130), and (iii) Critique of the Further TJI (Dkt. 2171).

1 Instructions on Trade Secret Misappropriation and Tentative Special Verdict Form (*see* Dkt. 2077 at
2 4-9), the jury should decide reasonable royalty damages.

3 In Exhibit 2 to this response, Waymo sets forth its evidentiary proof that bears on the
4 reasonable royalty damages to which Waymo is entitled as a result of Defendants' trade secret
5 misappropriation. Waymo reserves its rights to offer additional and/or different evidence, through
6 witness testimony and documentary evidence, on this issue during trial.

7 **VI. ISSUE #6: DEFINITIONS OF "WILLFUL" AND "MALICIOUS"**

8 The parties are continuing to meet and confer regarding this issue and Waymo will be
9 prepared to address its position at the hearing.

10 **VII. ISSUE #7: OTTOMOTTO LLC**

11 The parties are continuing to meet and confer regarding this issue and Waymo will be
12 prepared to address its position at the hearing.

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14 DATED: November 12, 2017

QUINN EMANUEL URQUHART & SULLIVAN, LLP

15 By /s/ Charles K. Verhoeven

16 Charles K. Verhoeven

17 Attorneys for WAYMO LLC
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